

BOOK REVIEW

Understanding the Telecommunications Act of 1996

Guidebook to the Telecommunications Act of 1996; by Charles D. Ferris, Frank W. Lloyd, and Howard J. Symons; Matthew Bender & Co., Inc. (1996); 298 pages

The Telecommunications Act of 1996: Special Report; by Peter W. Huber, Michael K. Kellogg, and John Thorne; Little, Brown & Co. (1996); 428 pages

Telecommunications Act Handbook: A Complete Reference For Business; by Leon T. Knauer, Ronald K. Machtley, and Thomas M. Lynch; Government Institutes (1996); 620 pages

Legal Guide to Broadcast Law and Regulation; by the National Association of Broadcasters (5th ed. 1996); 700 pages

The Telecommunications Act of 1996: What It Means to Local Governments; by Miller, Canfield, Paddock & Stone, PLC; National League of Cities (1996); 38 pages

National Regulatory Research Institute (NRRI) Series on the 1996 Telecommunications Act (all 1996):

The Eligible Telecommunications Carrier: A Strategy for Expanding Universal Service; by Phyllis Bernt; 87 pages

Determining When Competition is "Workable": A Handbook for State Commissions Making Assessments Required by the Telecommunications Act of 1996; by David Chessler; 103 pages

Convergence and Controversy in Early Interconnection Agreements; by Vivian Witkind Davis and Michael E. Clements; 43 pages

State Commission Mediation and Arbitration of Interconnection Agreements: Procedures and Status Under the Telecommunications Act of 1996; by Vivian Davis and Nancy Zearfoss; 43 pages

Competition-Enhancing Costing and Pricing Standards for Telecommunications Interconnection; by David Gabel; 44 pages

State and Federal Number Portability Policies; by Raymond Lawton and Nancy Zearfoss; 16 pages

Rights-of-Way and other Customer-Access Facilities: Issues, Policies, and Options for Regulators; by Edwin Rosenberg and Stella Rubia; 138 pages

Reviewed by Christopher H. Sterling⁽¹⁾

On February 8, 1996, President Clinton signed the Telecommunications Act of 1996 (96 Act), a far-reaching set of amendments to the 1934 Communications Act (34 Act) passed the week before by wide margins in both houses of Congress. The ceremony capped several years of congressional hearings and bill drafting, and was in many ways the long-delayed outcome of an effort begun two decades ago to update the 1934 benchmark law. The monographs reviewed in this essay are among the first to discuss provisions of the new law, what they mean, and their likely impact. Each is designed as a practical guide--for two different kinds of practitioners--seeking their way through the substantial changes wrought in the country's basic telecommunications policy framework. The publications fall into two categories: general treatises covering the whole act and directed chiefly at attorneys, and briefer more focused guides designed for state and local public utility regulators.

Of the first category of works designed for attorneys, by far the most substantial of the lot is the *Telecommunications Act Handbook: A Complete Reference for Business* which is the only hardback and is the most expensive (\$89). The three editors, all with Wilkinson, Barker, Knauer & Quinn, have gathered different authors for each of the eight main chapters which take up about 170 pages. The first five include a brief legislative history (covering the 103rd and 104th Congresses only), telephony provisions of the 1996 amendments, broadcast provisions, cable television changes, and segments dealing with wireless mobile communications. The remaining three take a different tack: one examines regulatory reform as embodied in the provisions of the 96 Act, and the last two put the changes into an international perspective with a chapter on telecommunications reform in Germany, and a review of global communications principles and a need for a "framework of ordering" same. The majority of the book's length is made up of appendices: the 96 Act as passed, the 34 Act as amended by the 1996 statute (at nearly 300 pages, this invaluable feature is the longest single part of the book), a table on the status of local switched competition, and a proposed schedule of FCC rulemakings. The book rounds out with a glossary, bibliography, and index.

The *Handbook* has two immediate strengths not shared by the other titles. Its' lengthy appendix clearly showing how the 34 Act has been changed (superceded words are crossed out and new provisions are double underlined) is the first available (though a Government Printing Office version, showing only the integrated new Act with no marking as to what is changed, has recently appeared). This is a valuable tool especially because of its highlighting of the dramatic changes. The two international chapters will be useful to readers concerned with the broader context of American legal changes. The remainder of the analytic text "walks" the reader through key provisions of the Act. It does not assume substantial prior knowledge of the field (even offering short potted histories of the relevant industries and their regulation), making it a useful primer for those new to practice in this area. Several figures supplement the text.

The Telecommunications Act of 1996: Special Report (Huber et al.) was the first of these treatises to appear and is designed to supplement the three authors' earlier books: *Federal Telecommunications Law* (1992, and its *Supplement* 1995), and *Federal Broadband Law* (1995), though it can readily be used as a stand-alone guide. The four analytic chapters (one each on telephony, broadcasting, cable and video services, and obscenity and violence provisions) take the same discursive approach as the earlier books and occupy 120 pages. They differ from the *Handbook* in two regards: they are extensively annotated (much like law review articles), and they provide far more coverage of the contested obscenity and violence provisions now under court review. Appendices offer two statutory supplements: the 96 Act itself, and the joint explanatory statement of the congressional conference committee that reported the act out for final votes. Though it lacks an overall index, the table of contents for this volume is sufficiently detailed to serve the same purpose. The strength here is the depth and breadth of the text material, by far the most extensive (the print is smaller so there is more per page) of the three general treatises.

Somewhat more focused in its approach is *Guidebook to the Telecommunications Act of 1996: Special Supplement to Cable Television Law* wherein Charles Ferris and his colleagues supplement their three-binder treatise (1984 and regular updates since) on cable and related regulation. Their book appears in four parts: a section-by-section analysis of the 1996 amendments; a timeline of FCC investigations and reports required (or merely requested) by the 96 Act; the full text of the Act; and the joint explanatory statement of the conference committee. The timeline is drawn from the Act itself and does not reflect some Commission changes in the schedule. Thus the only unique part of this volume is the brief (40 pages) section-by-section analysis. This merely restates the Act's provisions in slightly more straightforward language, with no other background information or analysis. Of the three general treatises, this is the least analytic in the broad sense of that term, and is clearly designed more for ready reference by readers holding the authors' main treatise.

Though the act focuses on common carrier matters, there are important changes in provisions controlling broadcasting and other electronic media. The National Association of Broadcaster's (NAB) *Legal Guide to Broadcast Law and Regulation* is the new (fifth) edition of a book first issued in 1977 and is now updated to include provisions of the 96 Act as well as related FCC rulemakings. Covered here are the changes in ownership rules, the V-chip requirement for television receivers, and other changes. As of this writing, it is the only comprehensive guide to electronic media regulation which takes the 96 Act's provisions into account.

Turning next to the guides aimed at state officials, a series of brief studies concerning the 96 Act's implications for state regulators are being published by the National Regulatory Research Institute (NRRI), the research arm of

National Association of Regulatory Utility Commissioners. More are to come, and of those which have appeared so far, seven of the more broadly-applicable are noted here. Some are authored by NRRI's own resident researchers while others are commissioned from experts elsewhere, often academics who follow the field closely. Each deals with a specific aspect of the 96 Act and related new FCC rules which have thus far appeared. Again, the intent here is different than with the legal guides discussed above--the NRRI studies are designed to provide practical (sometimes administrative) policy guidance for state agency and legislative staff as opposed to backgrounding a legal practice. They offer analytic comment as opposed to specific legal advice. Taken together, the NRRI report series is rapidly becoming a veritable handbook for those concerned with state-level issues.

The most substantial of the NRRI studies, *Determining When Competition is "Workable"* describes the current state of thought in the economics and legal professions on how one ascertains the markets within which competition may be occurring, and whether such competition as exists is sufficient to prevent the exercise of *market power*. Chapters discuss competition as a factor in economics and utility regulation, provisions of the 96 Act that require competitive determinations, measuring competition in the real world, evaluating the competitiveness of some actual telecommunications markets (yellow pages, inside wiring, and interexchange services), and suggested data and reports relating to competition. Extensively annotated and supplemented with tables, this is directly aimed at state public utility commissioners and their staffs, offering valuable and politically-neutral advice concerning a primary state-level requirement of the Act.

Convergence and Controversy in Early Interconnection Agreements focuses on perhaps *the* most controversial issue in the Act: the conditions (especially the prices to be charged) under which competitive service providers will interconnect with incumbent local exchange monopoly carriers. The brief summary begins with a text overview and offers a tabular census of actual agreements in cities and states across the country specifying fees to be paid. *State Commission Mediation and Arbitration of Interconnection Agreements: Procedures and Status under the Telecommunications Act of 1996* pursues some of the same subject material, reporting in tabular form (with comments) on both process and outcomes of the arbitrations thus far. *Competition-Enhancing Costing and Pricing Standards for Telecommunications Interconnection* offers a number of principles for states to consider when adopting cost models. This will be especially important if the appeals court stay on cost portions of the FCC's interconnection order are upheld in the long run, as states will then have to operate without any federally-mandated guidelines.

Rights-of-Way and Other Customer-Access Facilities: Issues, Policies, and Options for Regulators relates potential network models to practical state-level concerns about economics and interest groups to assess the rights-of-way provisions of the 96 Act. Many examples, some of them hypothetical, supplement discussion of rights-of-way policy and pricing models. A variety of completed or on-going FCC proceedings are also assessed.

Focusing on the new players the Telecommunications Act of 1996 is designed to encourage--and the universal service it intends to strengthen--is *The Eligible Telecommunications Carrier: A Strategy for Expanding Universal Service*. The report focuses on the ETC (eligible telecommunications carrier) that would be a new entrant, designed to supply basic local exchange service, and thus eligible for universal service subsidies as are the existing "imbedded" LECs. Several useful charts supplement the clear text to show how this can be accomplished. Finally, *State and Federal Number Portability Policies* offers a brief text and handy diagrams to clarify the issues involved in this aspect--important to consumers and businesses alike--of the 96 Act.

Local governments are affected by the 96 Act's provisions as well. *The Telecommunications Act of 1996: What it Means for Local Governments* takes local officials by the hand and walks them through the Act. This brief guide assumes no prior knowledge--its first two sections briefly summarize the field and the Act--and discusses removal of barriers to entry, provision of telecommunications services by cable operators, provision of cable and video services by telephone companies, changes in the cable act, impact of the Act on local zoning power (because of provisions concerning some kinds of antennas), and effects on local taxation. The presentation is concise and to the point, with boxed "things to think about" sections to focus local official decision-making.

This growing mini-shelf of material underlines the importance of the 96 Act's changes in both common carrier and electronic media regulation. Other than the reprinting of the Act and (in two treatises) the joint committee report, there is markedly little overlap in the approach and content of these books. This "first wave," however can tell only the

statutory part of the story. In other venues (chiefly the FCC and the courts), the many rulemakings and reports required by the 96 Act to fill in the holes within the legislative framework are progressing, some more rapidly than others. Until all of those have played out--a situation at least a couple of years away given pending court reviews already under way--the full and definitive picture of the 96 legislation's impact can't be fully known. These early guides are useful interim assessments--more are surely to come.

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Last updated: 17 March 1997

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